

April 4, 2005

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Subject: Complaint Filed Against John Ladenburg, Pierce County Executive - PDC Case No. 04-440

Dear Mssrs. Franta, Washam, & Veal:

The Public Disclosure Commission staff has completed its investigation of your complaints received October 31 and November 4, 2003 alleging that John Ladenburg, Pierce County Executive, used resources and facilities of Pierce County to support Pierce County Proposition #1 on the 2003 general election ballot.

The statute implicated by the complaint filed in this matter is RCW 42.17.130, which prohibits use of public facilities to support or oppose campaigns. On July 29, 2002, the King County Superior Court entered a permanent injunction that affected PDC activities to enforce and educate the public about RCW 42.17.130. The case was *Washington Education Association v. PDC*. The PDC had produced guidelines discussing RCW 42.17.130. The WEA filed a lawsuit challenging the guidelines and raising constitutional claims concerning RCW 42.17.130. Despite the PDC's objections, the superior court ordered the PDC to remove the guidelines from its website, to not further disseminate the guidelines as written or disseminate similar information about RCW 42.17.130, and to not initiate or engage in enforcement activities based upon the guidelines as written or similar information. The PDC appealed to the State Supreme Court. On December 11, 2003, the State Supreme Court reversed the superior court. The Supreme Court issued a mandate to the superior court on January 5, 2004, which formally concluded the case. The PDC resumed its usual activities regarding RCW 42.17.130. One of those activities was to process complaints that had been pending or were received at the time the permanent injunction was in effect. Investigation of your complaint was started March 3, 2004 following the State Supreme Court's reversal of the Permanent Injunction.

PDC staff reviewed your complaint in light of the following statute:

RCW 42.17.130 prohibits elected officials, their employees, and persons appointed to or employed by a public office or agency from using or authorizing the use of public facilities, directly or indirectly, for the purpose of assisting a candidate's campaign or for the promotion of, or opposition to, any ballot proposition.

You alleged that John Ladenburg, Pierce County Executive, used Pierce County facilities to support Proposition 1, a proposed public safety and criminal justice sales tax increase that was on the November 4, 2003 general election ballot by producing and distributing two postcards that promoted passage of Proposition 1, and that the postcards were targeted to registered voters. We found that:

- On August 5, 2003, the Pierce County Council introduced a Pierce County Ordinance to place a proposed public safety and criminal justice sales tax increase measure on the ballot. On September 2, 2003, the Council approved the ordinance, placing Proposition 1 on the November 4, 2003 general election ballot, a measure to increase the sales and use tax in Pierce County by three tenths of one percent, to fund criminal justice activities.
- The Pierce County Council appropriated \$60,000 to be used to distribute information to the public regarding the impacts of Proposition 1 on Pierce County.
- John Ladenburg, Pierce County Executive, authorized and approved the preparation and content of two large postcards that in PDC staff's opinion were promotional, and were not a fair and objective presentation of the facts. Ronald Klein is the Pierce County Director of Communications who wrote the postcards at Mr. Ladenburg's direction. The mailers were produced and mailed at a significant cost to Pierce County, \$55,060, not including staff time.
- The first postcard was mailed on October 16 and 17, 2003, approximately two weeks before the election. It was targeted to approximately 75,000 households with a voter who had voted in two of the last four elections. The first postcard contained several promotional phrases such as the measure will "**Assure** that offenders do not receive early release..." and it will "**Protect** victims and keep young people out of jail..."
- A second postcard was mailed October 29 and 30, 2003, four to five days before the November 4th election, targeted to the same audience. The second mailer was not materially different from the first mailer and went beyond stating the facts in a fair and objective manner and speculated on the impacts of passing Proposition 1. For example, in addition to stating that 100 new county and city police officers will be hired, it speculates that *law enforcement will be improved*. The second postcard appears to have been sent to reinforce the message in the first mailer, rather than to clarify information to the recipients.
- By emphasizing violent and serious felony crimes, and minimizing the sales tax increase, the information presented in the postcards was not a fair and objective presentation of the facts.

- Mr. Ladenburg stated that the mailings were sent to registered voters because funds were not available to send the postcards to all residents of Pierce County, and because he believed that likely voters were the residents most in need of receiving the information.
- Pierce County staff contacted PDC staff prior to finalizing the first mailing, and asked PDC staff for review and comment. PDC staff informed Pierce County staff that they were unable to review the draft document for apparent compliance with RCW 42.17.130 because an injunction had been issued by a King County Superior Court Judge. During this time, no fact sheets were reviewed.
- Mr. Ladenburg stated that had PDC staff reviewed the first mailer, Pierce County would have followed staff's advice and taken corrective action with regard to its content.

PDC staff believes there is evidence that John Ladenburg, Pierce County Executive, used resources and facilities of Pierce County to promote passage of Pierce County Proposition #1 on the 2003 general election ballot in violation of RCW 42.17.130, by publishing and distributing two postcards that were not a fair and objective presentation of the facts, and that were targeted to registered voters. However, because this action occurred during a time the injunction was in effect and when no guidance was available from PDC staff, we will not be taking enforcement action in this instance. Mr. Ladenburg will be cautioned that PDC staff believes his actions violated RCW 42.17.130, and that if he engages in similar actions in the future, enforcement action will likely be taken.

After a careful review of the alleged violations and relevant facts, we have concluded our investigation and, with the concurrence of the Public Disclosure Commission, I am dismissing your complaints against John Ladenburg, Pierce County Executive.

If you have questions, please contact Phil Stutzman, Director of Compliance, at (360) 664-8853 or toll free at 1-877-601-2828.

Sincerely,

Vicki Rippie
Executive Director

c: John Ladenburg, Pierce County Executive
Ronald L. Williams, Pierce County Deputy Prosecuting Attorney